Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	CS Docket No. 99-230
Competition in the Markets for the	)	
Delivery of Video Programming	)	

COMMENTS OF DIRECTV, INC.

DIRECTV, Inc.

Gary M. Epstein
James H. Barker
Kimberly S. Reindl
LATHAM & WATKINS
1001 Pennsylvania Ave., NW
Suite 1300
Washington, D.C. 20004-2505
(202) 637-2198

August 6, 1999

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	CS Docket No. 99-230
Competition in the Markets for the	)	
Delivery of Video Programming	)	

COMMENTS OF DIRECTV, INC.

DIRECTV, Inc.[1] ("DIRECTV") hereby submits the following comments in response to the Commission's Notice of Inquiry in the above-captioned matter.

I. OVERVIEW

As of the end of July 1999, DIRECTV had more than 7.4 million subscribers nationwide.[2] Using three high-powered direct broadcast satellites at 101° W.L., DIRECTV currently offers more than 210 channels of digitally-delivered entertainment, educational, and informational programming directly to homes and businesses equipped with the DIRECTV System, which features satellite dish antennas only 18 inches in diameter.

When DIRECTV first launched its DBS-1 satellite five years ago – the culmination of ten years and $750 million worth of effort and investment – DIRECTV was dedicated to providing consumers with a multichannel video programming distributor ("MVPD") alternative to incumbent cable television operators. DIRECTV remains dedicated to that goal. Recent

---

1 DIRECTV is a wholly owned subsidiary of DIRECTV Enterprises, Inc., a licensee in the DBS service and a wholly-owned subsidiary of Hughes Electronics Corporation.

2 This figure includes customers subscribing to the *PRIMESTAR by DIRECTV* medium-power service. As of the end of July 1999, *PRIMESTAR by DIRECTV* had approximately 2 million customers subscribing to its service.

acquisitions have augmented DIRECTV's subscriber base and are allowing DIRECTV to expand its direct broadcast satellite ("DBS") offerings. Specifically, DIRECTV's acquisition of United States Satellite Broadcasting Co., Inc. ("USSB")[3] will facilitate the delivery of DIRECTV® programming from the 110° W.L. location, in addition to allowing DIRECTV to augment the programming delivered from the 101° W.L. orbital position.[4] Similarly, DIRECTV's acquisition of Tempo Satellite Inc.'s ("Tempo") DBS authorization will allow DIRECTV to utilize 11 DBS channels located at the 119° W.L. orbital position that, until now, have gone unused.[5]

As DIRECTV has pointed out extensively in other proceedings, the progress that has been achieved by DIRECTV and other DBS providers is threatened by two serious developments in the MVPD marketplace: (i) the evasion of the program access law that was enacted to prevent anticompetitive activity by vertically-integrated cable incumbents, and (ii) the serious threat of interference posed by new, proposed services that seek to share the mission-critical frequency band designated for primary use by DBS operators. Both of these critical issues must be addressed by the Commission if DBS is to continue to progress as an MVPD competitor.

A. Evasion Of The Program Access Law

When Congress enacted Section 628 of the Communications Act[6] more than seven years ago, it recognized that access by non-cable MVPDs to vital programming controlled by

---

3 *United States Satellite Broadcasting Co., Inc. and DIRECTV Enterprises, Inc., Order and Authorization,* DA 99-633 (rel. Apr. 1, 1999).

4 The Commission recently granted DIRECTV's *Application for Authority to Launch and Operate Replacement Satellite DBS-1R*, Order and Authorization, DA 99-1524 (rel. Aug. 2, 1999). In conjunction with this application, DIRECTV has also applied for authority to drift its DBS-1 satellite to the 110° W.L. orbital location. *See DIRECTV, Inc., Application for Minor Modification,* SAT-MOD-19990603-00062 (June 3, 1999).

5 *Tempo Satellite, Inc. and DIRECTV Enterprises, Inc., Order and Authorization,* DA 99-1043 (rel. May 28, 1999).

6 47 U.S.C. § 548.

incumbent cable operators (or their vertically integrated programming affiliates) is essential to developing robust MVPD competition in local markets. Congress was particularly concerned that incumbent cable operators stood in a position, directly or indirectly, to exercise leverage over affiliated programmers in order to deny or restrict new entrants' access to critical programming. Congress directed the Commission to "address and resolve the problems of unreasonable cable industry practices, including restricting the availability of programming and charging discriminatory prices to non-cable technologies."[7] Congress therefore designed a regulatory framework intended to constrain the unfettered exercise of market power by cable operators and their affiliates, which otherwise have the incentive and ability to thwart emerging competition in the MVPD market.

DIRECTV is extremely concerned that the Commission recently has abdicated its responsibility to enforce the program access law by refusing to apply it to satellite cable programming that was specifically migrated to a terrestrial delivery mode for the purpose of evading the law.[8] This method of "terrestrial evasion," coupled with a corresponding refusal to sell such programming to an entire class of MVPD competitors, falls squarely within the protective sweep of the program access law. DIRECTV is therefore gravely concerned that the Commission's recent program access decisions have given incumbent cable operators across the nation the "green light" to use what appears to have become a "loophole" in the program access law. This problem is discussed further below in response to the Commission's inquiries in

---

7 H. Rep. No. 862, 102d Cong., 2d Sess., 93 (1992).

8 *See DIRECTV, Inc v. Comcast Corp., et al,* DA 98-2151, Memorandum Opinion and Order (rel. Oct. 27, 1998); *Echostar Communications Corp., v. Comcast Corp., et al,* DA 99-235, Memorandum Opinion and Order (rel. Jan. 26, 1999).

paragraph 10(c) of the Notice.

B. Interference In The 12 GHz Downlink Band

Recognizing the importance of protecting and supporting the growth of DBS services, the Commission historically has been committed to clearing the 12 GHz frequency band[9] – the primary downlink spectrum used by DBS providers – of sources of unacceptable interference.[10] Recently, however, the Commission has begun to entertain the idea of allowing new sources of interference into the 12 GHz band. Specifically, related entities known as Broadwave USA, Diversified Communication Engineering, Inc., and Northpoint Technology, Ltd., have been engaged in an effort to introduce a terrestrial point-to-multipoint microwave service on a secondary basis into the 12 GHz band. The Commission's Office of Engineering and Technology has granted two experimental licenses and an Experimental Special Temporary Authorization to allow testing of the Northpoint technology in King Ranch, Texas, Austin, Texas, and Washington, D.C. areas, respectively,[11] despite the vigorous objections of the DBS industry.[12]

---

9 The references herein to the 12 GHz band refer to the 12.2-12.7 GHz portion of that band.

10 *See, e.g., Public Notice, Initiation of Direct Broadcast Satellite Service – Effect on 12 GHz Terrestrial Point-to-Point Licensees in the Private Operational Fixed Service,* 10 FCC Rcd 1211 (1994) (reminding remaining 12 GHz terrestrial licensees that they should relocate their operations to other available frequency bands or alternative facilities).

11 Diversified Communication Engineering, Inc., File No. 0094-EX-ST-1999, Call Sign WA2XMY (July 20, 1998) (King Ranch, Texas; Austin, Texas); Diversified Communication Engineering, Inc., Experimental Special Temporary Authorization, File No. 0094-EX-ST-1999 (May 27, 1999) (Washington, D.C.).

12 *See also* Letter to Mr. Bruce A. Franca, Office of Engineering and Technology from Pantelis Michalopoulis, Attorney for EchoStar Satellite Corporation and EchoStar 110 Corporation and James H. Barker, Attorney for DIRECTV, Inc. (July 27, 1999); *Application of DIRECTV, Inc. For Expedited Review and Request for Immediate Suspension of Testing, In the Matter of Diversified Communication Engineering, Inc., Experimental Special Temporary Authorization,* File No. 0094-EX-ST-1999, Call Sign WA2XMY (June 25, 1999). DIRECTV's Petition for Expedited Review and Request for Immediate Suspension remains pending before the Commission. *In the Matter of*

DIRECTV has provided detailed engineering analyses to show that this technology cannot coexist with the DBS service at 12 GHz, and that it poses a dire threat of interference to the receipt of DBS programming by millions of DBS subscribers.[13]

In addition to the interference threat posed by the Northpoint technology, NGSO FSS systems, such as Skybridge and Virtual Geosatellite, also propose to use the 12 GHz DBS downlink band.[14] In addition, these NGSO FSS systems propose to use the 17.3 to 17.8 GHz frequency band, the DBS uplink band.[15] For reasons DIRECTV has explained in the NGSO rulemaking proceeding, and in its comments on the individual applications, the Commission should make it a priority to preserve the interference-free use of the frequency bands designated

---

Experimental License of Diversified Communication Engineering, Inc., File No. 6001-EX-MR-1998, Call Sign WA2XMY, Petition for Reconsideration of DIRECTV, Inc. (filed Aug. 19, 1998) *Reply Comments of DIRECTV, Inc.* (filed Sept. 8, 1998). DIRECTV's Petition for Reconsideration of the Commission's authorization of testing in the King Ranch and Austin, Texas locations remains pending. *See also* Letter to Steve Sharkey, Chief, Satellite Engineering Branch, Satellite & Radio Communications Division, International Bureau, FCC from Paul R. Anderson, Director, DIRECTV, Inc. (Apr. 13, 1998) (alerting the FCC to the likelihood that the experimental stations proposed by Diversified would cause significant interference to DIRECTV subscribers' receipt of DBS service).

13 *See Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency, with GSO and Terrestrial Systems in the Ku-band Frequency Range, ET Docket No. 98-206,* Comments of DIRECTV, Inc. (filed Mar. 2, 1999); Reply Comments of DIRECTV (filed Apr. 14, 1999).

14 *See Application of Skybridge, L.L.C. for Authority to Launch and Operate the Skybridge Satellite System,* File Nos. SAT-AMD-19980630-0056; SAT-AMD-19990108-00004 (Jan. 8, 1999); *Application of Virtual Geosatellite, L.L.C. for Authority to Launch and Operate A Global Fixed-Satellite Service System Employing Non-Geostationary Satellites In Sub-Geosynchronous Elliptical Orbits,* File No. SAT-LOA-19990108-0007 (Jan. 8, 1999).

15 This band has been allocated internationally for DBS downlinks in Region 2. The use of this band for "reverse band" working operations will provide a critical source of additional DBS capacity.

for primary use for DBS services.[16] To properly design and secure funding for next-generation satellite systems, DBS operators must have the requisite assurance that their systems will operate in an environment free from interference from NGSO satellite or feeder link operations.

The Commission should not now jeopardize the progress of DBS as a cable competitor during this critical phase of the service's development. The Commission must not allow interference by terrestrial and satellite systems that could destroy the substantial progress DBS providers have achieved in the past 5 years.

II. RESPONSE TO DATA REQUESTS

Set forth below are DIRECTV's responses to certain of the specific questions raised in the Notice.

PARAGRAPH 7

7(a). Number Of Homes Capable Of Receiving DBS Service

Of the 99.4 million television households in the United States, 91.8 million homes are passed by cable. Nearly all of the television households in the continental U.S. and much of Alaska[17] are able to receive DIRECTV programming if they purchase the DIRECTV System and install it within the proper line of sight. As of the end of July 1999, approximately 7.4 million households subscribe to DIRECTV.[18]

---

16 *See* Comments of DIRECTV, Inc. in ET Docket No. 98-206 (Mar. 2, 1999); *see also Petition to Defer Consideration of, or Hold in Abeyance, and Comments of DIRECTV on Applications for Authority to Launch and Operate Non-Geostationary Satellite Systems at Ku Band* (filed June 30, 1999).

17 While residents in the continental United States receive DIRECTV using an 18-inch satellite dish, Alaska's geographic location requires Alaska residents to use larger dishes in order to receive DIRECTV programming.

18 *See supra* note 2.

PARAGRAPH 8

8(a). Choices For MDU Residents

Many residents of multiple dwelling units ("MDUs") do not enjoy a choice of video providers, as cable incumbents continue to have a hammer-lock on the market for the provision of video programming services to MDUs. Cable's success in thwarting competition is fundamentally due to exclusive service contracts or exclusive "rights of entry" that do not allow MDU property owners and landlords to procure video programming services from an alternative service provider. In many cases, such contracts include an "evergreen" term based on the incumbent's franchise renewal.

The consequence of the MDU problem is straight-forward. While DIRECTV's penetration is roughly evenly distributed throughout the United States, the major exception continues to be certain large metropolitan areas, such as New York city, in which a large percentage of consumers live in MDUs. The geographic distribution data thus underscores the fact that DIRECTV's penetration, particularly in urban areas, has been hampered by the exclusive, long-term, MDU contracts that cable providers have been able to obtain because of their dominant market position.

8(b). Inside Wiring

In past proceedings regarding the disposition of cable home run wiring, DIRECTV has urged the Commission to adopt rules to provide MDU owners with the right to require cable incumbents to allow alternative MVPDs to share cable-owned inside wiring.[19] Mandated sharing is necessary to ensure that alternative MVPDs have the practical ability to serve MDU residents. With respect to DBS, sharing will not cause any harmful interference to the cable signal because

---

[19] *See* Comments of DIRECTV in CS Docket No. 95-184; MM Docket No. 92-260.

DBS frequencies do not overlap with cable frequencies. Indeed, the sharing of wiring occurs today in a number of MDUs in which the MDU owner owns its inside wiring and has permitted such sharing. Thus, DIRECTV continues to advocate rules to mandate sharing of wiring where technically feasible.

8(c). Over-The-Air Reception Devices

DIRECTV supports the over-the-air reception device ("OTARD") rule and the Commission's vigorous enforcement of that rule. The FCC's OTARD rule has been somewhat helpful to a select segment of MDU residents in obtaining DBS service; in particular, it has helped those residents who have balconies and/or patios within the proper line of sight to receive DBS signals.[20] The Commission's OTARD decisions have encouraged some MDU landlords and owners to seek DTH distribution systems that use a single common dish for reception to prevent "dish clutter" in their MDU communities. However, the OTARD rule has not assisted residents of apartments, condominiums and other MDUs who lack an exclusive-use area suitable for antenna installation (*e.g.*, a south-facing balcony or patio). DIRECTV believes that the rule should be extended to renters and owners who do not have exclusive use of areas suitable for antenna installation.

---

20 *See In the Matter of Restrictions on Over-the-Air Reception Devices: Television Broadcast, Multichannel Multipoint Distribution and Direct Broadcast Satellite Services, CS Docket No. 96-83, Second Report and Order,* 13 FCC Rcd 23874 (1998).

PARAGRAPH 10

10(a). Homes Passed

DIRECTV currently serves the continental United States ("CONUS") as well as much of Alaska.[21] The launch of DBS-1R (DIRECTV-1R) will allow DIRECTV to improve its service to Alaska. Moreover, DIRECTV has plans to offer service, for the first time, to residents of Hawaii.

10(b). Effort Required To Expand The Number Of Channels And Services Offered

DIRECTV has substantially reached current limits on digital compression with respect to the capacity on its existing satellites. DIRECTV's recent acquisitions of frequencies formerly assigned to USSB[22] and Tempo,[23] combined with DIRECTV's plans to modify its current system[24] will allow DIRECTV to expand its service offerings. However, in order to compete successfully with cable incumbents, which have begun to upgrade their systems and aggressively market advanced broadband capabilities, DIRECTV will need to expand its system further.

Given the acute need for additional DBS channel capacity, DIRECTV applied in June 1997 to construct, launch and operate a six-satellite expansion system using reverse band working operations at 17 GHz.[25] To date, the Commission has not acted on this application.

---

21 *See supra* note 17.

22 *United States Satellite Broadcasting Co., Inc. and DIRECTV Enterprises, Inc., Order and Authorization,* DA 99-633 (rel. Apr. 1, 1999).

23 *Tempo Satellite, Inc. and DIRECTV Enterprises, Inc., Order and Authorization,* DA 99-1043 (rel. May 28, 1999).

24 *In the Matter of Application of DIRECTV, Inc, for Authority to Launch and Operate Replacement Satellite DBS-1R, Order and Authorization,* DA 99-1524 (rel. Aug. 2, 1999); *DIRECTV, Inc., Application for Minor Modification,* SAT-MOD-19990603-00062 (June 3, 1999).

25 *See Application of DIRECTV Enterprises, Inc. for Authority to Construct, Launch and Operate an Expansion System of Direct Broadcast Satellites* (June 5, 1997).

DIRECTV believes that the development of sources of additional expansion DBS capacity remains vital to ensure the growth of the service into the next millenium.

10(c). Regulatory And Judicial Developments

(i). Program Access

Access to programming controlled by vertically-integrated cable incumbents continues to be a crucial issue for DIRECTV, particularly in light of the Commission's recent interpretation of the program access law[26] which has allowed the practice of "terrestrial evasion" of the program access law to continue.

DIRECTV has experienced first-hand how this practice has undercut the vigorous enforcement of the program access law. In Philadelphia, the incumbent cable operator, Comcast, migrated cable programming formerly delivered by satellite to a terrestrial mode of delivery, and subsequently refused to sell that programming to DIRECTV and other DBS providers. Comcast maintained it did not have to sell the programming to DBS providers, as the programming no longer qualified as "satellite-delivered" programming. Construing the statute extremely narrowly, the Commission refused to apply the program access rule to Comcast's programming essentially because Comcast had switched to a terrestrial means of delivery.[27] The Commission's ruling essentially suggests that aggregating all of the transmission rights to virtually *every local professional sporting event* in a metropolitan area with the clear intent of eliminating DBS access to previously satellite-delivered regional sports programming is not an "unfair practice."

---

26 47 U.S.C. § 548.

27 *See DIRECTV, Inc v. Comcast Corp., et al,* DA 98-2151, Memorandum Opinion and Order (rel. Oct. 27, 1998).

Technological advancements that have diminished the costs of delivering programming terrestrially, coupled with the efforts of cable MSOs to "cluster" or trade their systems to form broad, contiguous service areas, have created an environment in which terrestrial distribution has become a more viable method of delivering regional and national programming from production facilities to cable headends. With access to increasingly large geographic regions, incumbent cable operators have begun to use terrestrial distribution as a new tactic to insulate themselves from the program access requirements, and will only be emboldened by the Commission's puzzling abdication of its enforcement responsibility in this area.[28] For these reasons, DIRECTV believes the Commission's unduly narrow construction of the program access law has threatened the ability of DBS operators to secure crucial programming from increasingly clustered and vertically-integrated cable incumbents.

(ii). Sources Of Interference

As noted above, DIRECTV has serious concerns regarding potential interference by recently proposed uses for the frequency bands designated for DBS services.

Northpoint Technology. During the past year, Northpoint Technology and its affiliates, Broadwave USA and Diversified Communication Engineering, have been engaged in an effort to introduce a terrestrial point-to-multipoint microwave service into the 12 GHz band on a secondary basis. As DIRECTV has demonstrated in its filings before the Commission, this

---

28 *See, e.g., Microwave Satellite Technologies, Inc. v. Cablevision Systems Corporation, MSG Sports Network, Inc., Fox Sports Network – New York and Rainbow Programming Holdings, Inc.,* CSR-5415-P (filed July 8, 1999); *RCN Telecom Services v. Cablevision Systems, MSG Sports, and Fox Sports Network,* CSR-5404-P (filed May 7, 1999).

technology poses grave risks of interference to the receipt of programming by DBS subscribers.[29] The Commission currently is permitting tests of the Northpoint technology in three separate locations: King Ranch, Texas, Austin, Texas, and Washington, D.C.[30] Because of the interference risks to tens of thousands of area subscribers, DIRECTV has petitioned the Commission for expedited review and immediate suspension of the authorization under which Diversified is testing the technology in Washington D.C.[31]

The interference that DIRECTV has documented using Diversified's own test results means that DBS subscribers will experience a loss of picture at locations close to Northpoint transmitters. Further away from the transmitters, the Northpoint technology seriously degrades DBS subscribers' service and will result in longer and more frequent rain outages, or "interruptions," to DBS service. If tolerated – even facilitated – by the Commission, the introduction of Northpoint technology at 12 GHz will seriously degrade and repeatedly interrupt DBS service.

---

29 DIRECTV provided extensive analysis of the Austin, Texas test data in its filings in ET Docket No. 98-206. *See e.g.,* Comments of DIRECTV, Inc., *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency, with GSO and Terrestrial Systems in the Ku-band Frequency Range, ET Docket No. 98-206,* (filed Mar. 2, 1999); Reply Comments of DIRECTV (filed Apr. 14, 1999); Opposition of DIRECTV, *In the Matter of Broadwave Albany, L.L.C., et al, Requests for Waiver of Part 101 of the Commission's Rules,* DA 99-494 (filed Apr. 12, 1999). *See also* DIRECTV's extensive objections to Diversified's testing of Northpoint technology, *supra,* note 12.

30 Diversified Communication Engineering, Inc., File No. 0094-EX-ST-1999, Call Sign WA2XMY (July 20, 1998) (King Ranch, Texas; Austin, Texas); Diversified Communication Engineering, Inc., Experimental Special Temporary Authorization, File No. 0094-EX-ST-1999 (May 27, 1999) (Washington, D.C.).

31 *Application of DIRECTV, Inc., For Expedited Review and Request for Immediate Suspension of Testing, In the Matter of Diversified Communication Engineering, Inc., Experimental Special Temporary Authorization,* File No. 0094-EX-ST-1999, Call Sign WA2XMY (June 25, 1999).

If the Northpoint technology is introduced into the frequency band that is "mission critical" to the provision of DBS services to millions of consumers nationwide, it will undercut the benefits of MVPD competition that the Commission has spent decades attempting to promote.[32] DIRECTV's specific concern here is that without adequately examining the Northpoint interference threat, the Commission may be inadvertently taking actions that are antithetical to the pro-competitive DBS policies it has pursued to date.

Proposed NGSO Systems. DIRECTV also has serious concerns regarding the NGSO operations proposed by SkyBridge and other NGSO applicants. These systems have proposed to operate NGSO downlinks in frequencies ranging from 11.7-12.7 GHz, which would overlap with the entire 12.2-12.7 GHz band used by DBS for downlinks. Before the Commission even contemplates the licensing of specific NGSO systems proposing to use the 12 GHz band, DIRECTV believes that the Commission must ensure that existing and future DBS operations – in which DBS operators collectively have invested billions of dollars and which today serve more than 9 million subscribers – are not adversely affected by NGSO operations. DIRECTV therefore has urged the Commission to defer action on the proposed system applications until such compatibility is conclusively established.[33]

---

32 Indeed, the Commission has established and followed for two decades the wise policy of allowing DBS to develop in an environment where terrestrial interference sources were cleared *out* of the 12 GHz band. *See, e.g., Public Notice, Initiation of Direct Broadcast Satellite Service -- Effect on 12 GHz Terrestrial Point-to-Point Licensees in the Private Operational Fixed Service,* 10 FCC Rcd 1211 (1994) (explicitly reminding remaining 12 GHz terrestrial licensees of their secondary status, and stating that "[i]n view of the imminent arrival of DBS service, terrestrial 12 GHz licensees should again consider relocating their operations to other available frequency bands or alternative facilities.").

33 *See Petition to Defer Consideration of, or Hold in Abeyance, and Comments of DIRECTV on Applications for Authority to Launch and Operate Non-Geostationary Satellite Systems at Ku Band* (filed June 30, 1999).

Certain of the NGSO applicants have also proposed to use the 17.3-17.8 GHz band for feeder links to NGSO systems,[34] despite DIRECTV's previous showings[35] that NGSO operations at 17 GHz should not be permitted. The Commission has recognized the need for DBS providers to acquire additional capacity,[36] and the 17.3-17.8 GHz band is currently the only band available for future DBS downlink use.[37] DIRECTV consistently has advocated that the Commission protect the band from incursions by NGSO operators, and thus opposes use of the band by NGSO systems.

10(d). Customer Switching

According to a recent survey conducted for the Satellite Broadcasting and Communications Association ("SBCA"),[38] the reasons consumers cited for their decision to subscribe to DBS were, in order of importance: (1) more channels than cable; (2) lack of access to cable; (3) dissatisfaction with cable; (4) cost of cable service; and (5) better picture and sound quality.

---

34 Notably, the NGSO applications filed by Hughes Communications, Inc. do not propose to use the 17.3-17.8 GHz band for feeder links. *See* HughesNET and HughesLINK Applications, File Nos. SAT-LOA-19990108-00002-00003, at 4 n.1.

35 *See, e.g.,* Comments of DIRECTV, Inc., ET Docket No. 98-206 (Mar. 2, 1999), at 11-14; Reply Comments of DIRECTV, Inc., ET Docket No. 98-206 (Apr. 14, 1999), at 37-39.

36 *See, e.g.,* Tempo Satellite, Inc. and DIRECTV Enterprises, Inc., DA 99-1043, *Order and Authorization* (rel. May 28, 1999) ("Tempo/DIRECTV Order"), at ¶ 19 (noting that "because cable operators are increasing their product offerings, DBS operators will have to increase their product offerings to remain competitive," and thus will require "increased channel capacity").

37 The International Telecommunications Union ("ITU") has allocated the 17.3-17.8 GHz band to Broadcast Satellite Services ("BSS") for primary use for downlinks in Region 2.

38 SBCA/Yankee Group 1999 DBS Subscriber Study.

PARAGRAPH 11(b)

11(b)(i). Growth Of DBS

In 1998, DBS service providers added more than 2.4 million new households nationwide, a 16% increase over new DBS subscribership in 1997.

11(b)(ii). Geographic Breakdown Of DBS Subscribership

With the exception of certain large metropolitan areas in which a large percentage of the population resides in MDUs, DIRECTV customers are spread relatively evenly throughout the United States.

11(b)(iii). Effect Of OTARD Decisions On DBS Subscribership In MDUs

See response to OTARD questions in Paragraph 8.

11(b)(iv). Differences Between Cable And DBS Consumers

DBS subscribers tend to have average incomes that are slightly higher than the average cable household, but the spread is narrowing. DBS subscribers are also more likely to be married and have children.

11(b)(v). Subscribers To Both DBS And Cable Services

According to a recent SBCA study:[39]

- 60% of new subscribers to DBS have cable service available;
- 15% of DBS subscribers currently also subscribe to cable;
- 87% of subscribers to both DBS and cable limit their cable service to a basic package;
- 80% of new subscribers considered the ability to access local channels extremely or very important; and
- over 50% of new DBS subscribers receive local broadcast signals using either an external rooftop antenna or internal rabbit ears.

---

39 *Id.*

PARAGRAPH 22

22(a). Program Options Offered To DIRECTV Subscribers

DIRECTV's programming information is attached as Exhibit 1.

22(b). Affiliations With Programming Networks

DIRECTV is not affiliated with any programming networks.

22(c). Types Of Programming Necessary For Successful Competition

At a minimum, DBS service providers must have access to broadcast (both distant networks and local channels) and cable network programming to compete successfully against incumbent cable operators. Access to in-region sports and news programming is also crucial for DBS providers to attract new subscribers and to satisfy their existing subscriber bases.

PARAGRAPH 24

24(a). Customized Programming Packages Planned Or Currently Offered

DIRECTV offers a number of different packages in order to accommodate different household income levels and programming interests. DIRECTV's programming information is attached at Exhibit 1.

PARAGRAPH 26

26(a). Planned Use Of DBS Channels Reserved For Non-Commercial Educational Programming

DIRECTV began providing information and application packets to potential non-commercial educational and informational programmers in June 1999. DIRECTV has asked

applicants to return the materials provided by September 1, 1999 and expects to make decisions on the applications thereafter.

PARAGRAPH 27

27(a). Electronic Programming Guides

All DIRECTV subscribers receive a full interactive electronic programming guide ("EPG"). DIRECTV's EPG is produced nationally but allows for some local customization of channel lineups. DIRECTV's subscribers do not pay an extra charge in order to receive the EPG.

PARAGRAPH 28

28(a). Effectiveness Of Program Access Rules

As explained in DIRECTV's response to the Commission's inquiry in Paragraph 10(c), DIRECTV believes the Commission's decisions allowing terrestrial evasion of the program access law have substantially undermined the law's effectiveness.

PARAGRAPH 30

30(a). Technical Advances

Since is inception, DIRECTV has been a technology leader. As the following examples illustrate, DIRECTV continues to deploy advanced technologies to attract new customers.

- **Dolby Digital**

Since June 1998, DIRECTV has broadcast a number of letterbox pay-per-view films with a simulcast of Dolby Digital 5.1-channel sound and MPEG-encoded audio. Dolby Digital is

considered the "next generation" audio standard, and has been introduced into the DIRECTV product to appeal to home theater enthusiasts. Dolby Digital allows the home theater enthusiast to hear six separate and discrete channels of sound, while the current sound system standard – Dolby ProLogic – provides full stereo sound to the "front" speakers, but transmits only a mono signal to the "rear" speakers. DIRECTV imposes no additional charge for the audio simulcast. The IRD required to receive the Dolby audio and pass it to a home theater system is manufactured by Thomson Consumer Electronics ("TCE"), Sony, and Hughes Network Systems ("HNS") and widely available for purchase in major consumer electronics stores. DIRECTV is the first MVPD to broadcast pay-per-view movies in Dolby Digital.

- **HDTV Broadcasts**

DIRECTV recently began offering Home Box Office's "HBO HDTV" channel to consumers on a national basis. Since November 1998, DIRECTV has been distributing an HDTV demonstration channel on an experimental basis. A 24-hour pay-per-view HDTV channel will replace the demonstration channel before the end of 1999. A number of major television manufacturers, including TCE, Hitachi and Toshiba, have announced that they will produce integrated HDTV/DIRECTV televisions.

- **Integrated ATSC/DIRECTV Set-Top Boxes and Televisions**

TCE, HNS, Hitachi, Toshiba, and Mitsubishi have announced that they will provide integrated ATSC/DIRECTV set-top boxes.[40]

- **Interactive Services**

In the past year, DIRECTV has announced several initiatives to offer interactive services to its customers. DIRECTV and Wink Communications have announced that DIRECTV will

---

40 *See also* DIRECTV's response to Paragraph 31(a).

begin offering Wink Enhanced Broadcasting to its subscribers beginning in the first half of 2000. Wink's technology allows advertisers and networks to create interactive enhancements to accompany traditional television programs and advertising. By clicking their remote control during an enhanced program or advertisement, viewers get program-related information such as local weather or sports updates, product samples and coupons, and can make purchases instantly. Wink will be deployed using current receiver technology and will be free to DIRECTV subscribers.

DIRECTV also has announced a strategic alliance with America Online ("AOL") to market uniquely integrated digital entertainment and Internet services nationwide. Specifically, DIRECTV and AOL will collaborate on a new service that combines digital satellite television programming from DIRECTV with AOL TV's[SM] enhanced interactive television Internet service. HNS will design and initially manufacture the combination DIRECTV/AOL TV set-top receiver.

- **Digital Video Recording**

In April, DIRECTV announced a partnership with TiVo, Inc. to allow DIRECTV subscribers to personalize their viewing and to access many more programs on demand. The TiVo technology uses a hard disk to allow consumers to pause programs, rewind, and select programs to record. The TiVo service will learn an individual consumer's television preferences and will record programs in accordance with these preferences. DIRECTV will work with TiVo to market the TiVo personalized TV service and Philips Personal TV receiver to existing and potential DIRECTV subscribers. DIRECTV customers will be able to choose between monthly, annual, or lifetime TiVo service packages.

- **Triple-feed antenna and receiver**

DIRECTV will make available this year a triple-orbit slot antenna and receiver that will permit DIRECTV subscribers to receive programming on an integrated basis from each of the 101°, 119°, or 110° W.L. orbital locations. The new technology, combined with a specialized integrated program guide, will permit DIRECTV to launch many new services such as "local-into-local" redistribution of terrestrial broadcast stations and Spanish-language services.

30(b). Role of advanced services in attracting subscribers

DIRECTV believes that advanced services will soon become an integral component of its total service offerings. Accordingly, DIRECTV has begun to explore means of providing advanced services in conjunction with its partners AOL, Wink, and TiVo. Because the services have not been launched, DIRECTV has no data at this time with which to assess the importance of advanced services in attracting subscribers.

PARAGRAPH 31

31(a). Deployment Of Set-Top Boxes And Availability In Retail Outlets

Since its establishment in 1994, DIRECTV has had a rigorous test program for set-top box designs before making commitments to large-scale production. This test program has encouraged multiple manufacturers to compete in the development and marketing of set-top boxes to serve the DBS subscriber market. Virtually all DIRECTV manufacturer types and models are available at major retail outlets such as Circuit City, Best Buy, Radio Shack, and others, as well as at discount retailers such as Wal-Mart and KMart, and satellite TV dealers. DIRECTV subscribers who obtain services through Bell Atlantic or SBC (Southwestern Bell) have the option of leasing their set-top boxes through those companies.

III. CONCLUSION

DIRECTV hopes the foregoing information is useful to the Commission in taking action to promote the continued emergence of competition in the MVPD industry.

Respectfully submitted,

DIRECTV, Inc.

By: _____

Gary M. Epstein
James H. Barker
Kimberly S. Reindl
LATHAM & WATKINS
1001 Pennsylvania Ave., NW
Suite 1300
Washington, D.C. 20004-2505
(202) 637-2198

August 6, 1999